

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

::::

ORDER

**Narendra Kumar Mathur
Vs.
Raj. Rajya Vidhyut Prasaran Nigam Ltd.**

**S.B. CIVIL WRIT PETITION NO.1967/2005
UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA.**

DATE OF ORDER

::

05th October, 2006

PRESENT

REPORTABLE

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Mr.Harish Purohit, Advocate for the petitioner.
Mr.Pankaj Bohra, Advocate for the respondents.

BY THE COURT

The petitioner has prayed for writ of mandamus against the respondents for quashment of their order dated 31st July, 2006 and directing them to consider his candidature for

promotion on the post of Assistant Engineer w.e.f. 02nd April, 1991 when persons junior to him were promoted.

The petitioner was appointed as Junior Engineer Gr.I in the services of the respondents by order dated 03rd August, 1984. A charge-sheet was served upon him on 10th June, 2003 to which he filed his reply on 22nd January, 1994. While the petitioner was facing disciplinary inquiry many of his juniors were promoted by the respondents on the post of Assistant Engineer by order dated 02nd April, 1991. However, in view of the fact that the inquiry proceedings against the petitioner was being continued and could not be concluded, the Chairman of the Rajasthan Electricity Board by his order dated 31st August, 1993 promoted as many as 70 of his juniors to the post of Assistant Engineer. In this order, the petitioner's name was at serial No.3 however at the bottom of the order a note was given that promotion granted to the petitioner was provisional as disciplinary proceedings for awarding penalty under Regulation 6 of the Regulation was pending against him. The disciplinary authority by his order dated 9th June, 1998 imposed

penalty of censure upon the petitioner. Feeling aggrieved thereby, the petitioner filed an appeal before the Appellate Authority who by his judgment dated 14th July, 2000 set aside the order of penalty and thus, the petitioners was exonerated of the charges. The petitioner submitted number of representations to the respondents on 18th August, 2000, 20th July, 2000, 02nd March, 2001. The respondents finally by their order dated 22nd March, 2001 decided his representations. Apart from requesting for promotion on the post of Assistant Engineer with effect from the date when his juniors were promoted, the petitioner has also requested for regularization of his suspension period from 10th January, 1991 to 15th July, 1992. in the following terms:-

"After considering his representation the disciplinary authority has ordered that Shri N.K. Mathur the then JEN now AEN be allowed all benefits as admissible to him regarding pay & allowances and to regularize the suspension period – 10.1.91 to 15.7.92 accordingly.

Accordingly, it is hereby ordered that Shri N.K. Mathur, the then JEN now AEN is allowed all benefits as admissible & suspension period (10.1.91 to 15.7.92) is also regularized."

The petitioner filed a writ petition against the said order

which was admitted on 30th October 2002. This Court directed the respondents to decide the representation of the petitioner. Pursuant to the directions of this Court directing the respondents to decide the representation of the petitioner, the respondents decided the representations by order dated 31st July, 2003. While rejecting the representation of the petitioner, the respondents passed the following order:-

"The issue is that whether though the said representation, the promotion order issued in his favour on 31.12.93 could be modified and given backdated effect from 2.4.91. The other point to be determined is whether enquiry, which was pending against him and was subsequently decided with his exoneration, has any impact at all on his promotion made earlier in the year 1993.

As has been discussed earlier, he was promoted despite the said enquiry being underway, in which he was awarded punishment of "Censure" in the year 1996 and was subsequently exonerated in appeal in March, 2001. However, since he was promoted despite pendency of enquiry, the punishment of "Censure" had no impact on his promotion as it was awarded on a latter date. Therefore, exoneration from that penalty would not entitle him to get the earlier promotion order reviewed. If he had any grievance against promotion order dated 31.12.93, he ought to have taken recourse to available remedies on that point of time by

challenging the said order. However, he continued to function as AEN from the said period and was given salary and increments and all benefits of AEN from that date onwards and this remained in force for about a decade. It cannot be reviewed at such a belated stage. This justification to review earlier promotion order would arise only if any new fact emerges which would have bearing on the promotion order issued earlier. The facts of this case are not so, as have been discussed earlier."

In response to this notice of this Court, the respondents have filed their reply in which they have reiterated their stand as contained in the order dated 22nd March, 2001.

I have heard Mr. Harish Purohit, learned counsel for the petitioner and Mr. Pankaj Bohra, learned counsel for the respondents and perused the records.

The respondents have not denied the fact that the petitioner was not promoted earlier along with his junior when originally promotion order was passed on 02nd April, 1991. They have also not been able to dispute the position that when his promotion was made on 31st December, 1993, it was a

promotion of temporary and officiating basis and a categorical note was given in the promotion order that promotion of the petitioner was provisional as a disciplinary proceedings for minor penalty against him under Regulation 6 of the Regulation was pending. When persons junior to the petitioner were promoted earlier than him only because of the pendency of the disciplinary proceedings against the petitioner, the respondents cannot be now allowed to say at a later point of time that merely because they promoted the petitioner at a later point of time even before the finalization of disciplinary proceedings, that would permanently foreclose the petitioner's entitlement to claim promotion from the date on which his juniors were promoted even if he is exonerated in the disciplinary proceedings. While the disciplinary authority by his order dated 09th June, 1998 imposed a minor penalty censure upon the petitioner, the appellate authority set aside that order of censure resulting into his complete exoneration from the charges. It would be wholly illegal on the part of the respondents to now contend that exoneration from that penalty would not entitle him to get promotion from an earlier date.

Another arguments advanced by the respondents is that when the petitioner accepted the promotion order dated 30.12.1993 made during the pendency of the disciplinary proceedings and did not take recourse to any available legal remedy on that point, order of his promotion dated 31.12.1993 having remained in force for about a decade, he would be now estopped from challenging this order and such an order cannot be reviewed at this belated stage. Logic of this argument is very difficult to understand because the order dated 31.12.1993 was an order passed in favour of the petitioner himself and therefore it could not be expected of him that he would himself challenge the order. When there was no question of his challenging the order not only because it was in his favour but also because he knew that by this order he was granted temporary and officiating promotion with a clear stipulation that such promotion was provisional due to pending disciplinary proceedings against him. Such similar stipulation was made in respect of four other candidates as well. Subsequently, when the petitioner was completely exonerated of the charges, its

consequences must follow.

The respondents were at liberty to invoke sealed cover procedure in the case of the petitioner but if they in their discretion decided to promote the petitioner, albeit on temporary/officiating basis, the position of the petitioner cannot be worst then those in whose case sealed cover procedure is invoked. Consequence of exoneration in the case of sealed cover procedure is implementation of the recommendations of the Departmental Promotion Committee.

I may in this connection usefully refer to observations of this Court in Mohan Singh vs. The State of Rajasthan & Ors. in S.B. Civil Writ Petition NO.3963/2004 decided on 01st September, 2006 wherein this Court while relying on the judgment of Hon'ble Supreme Court in Union of India Vs. Jankiraman, reported in AIR 1991 SC 2010 held as under:-

"In the present case, the promotion of the petitioner on the post of Agriculture Officer was withheld on account of the pendency of investigation against the petitioner in a

criminal case pursuant to the FIR lodged with Anti Corruption Department for offence u/s. 5(1)(E)(2) of the Prevention of Corruption Act. The Bureau upon conclusion of the investigation ultimately submitted final report on 19.12.1987 and the said report was accepted by the Court of competent jurisdiction in 06.03.1992. This was the only reason for which the sealed cover procedure was invoked in the case of the petitioner. The subsequent charge-sheet which the respondents are now relying was issued on 5.6.1997 whereas recommendation of the D.P.C. kept in sealed cover qua the petitioner pertained to the vacancies of the period 1993-96. While the sealed cover in the case of the petitioner was shown to have been invoked in the order of promotion passed in respect of other employees on 4.4.1991, the Final Report given by the Bureau was accepted by the Court on 6.3.1997 within a year of the acceptance of the final report. The respondents ought to have therefore immediately opened the sealed cover and acted upon the recommendations of the D.P.C."

As a result of the aforesaid discussion, the writ petition deserves to be allowed and is hereby allowed. The respondents are directed to consider the case of the petitioner for promotion with a reference to the date of promotion granted to his immediate juniors i.e. 02nd April, 1991 and if found suitable promote him from the said date with consequential benefits

along with interest @ 6% per annum. Compliance of this judgment be made within a period of four months from the date of service of its copy on the respondents.

[MOHAMMAD RAFIQ],J.

A.K. Chouhan/-